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Attorney for Defendant  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) No. CR 12-119 SI  
Plaintiff, )  
VICTOR FLORES, et al. ) DEFENDANT FLORES MEMORANDUM  
Defendant. ) OF POINTS AND AUTHORITIES IN  
 ) SUPPORT OF HIS JOINDER IN  
 ) DEFENDANT JOSEPH ORTIZ' MOTION  
 ) FOR DISCOVERY IN AID IN THE  
 ) DEFENSE OF A DEATH- ELEGIBLE  
 ) DEFENDANT'S  
 ) Date: August 3, 2012  
 ) Time: 11:00am  
 ) Place: Hon. Susan Illston, Court Room 10

## INTRODUCTION

On June 15, 2012, counsel for Defendant Joseph Ortiz filed a Motion for Discovery in Aid of the Defense of a death- eligible Defendant (Docket # 152). The motion requests the early and broad production of discovery, in part, to enable counsel to prepare and present its case

1 to the local authorities and, if necessary to the Capital Case Review Committee in Washington  
2 D.C, arguing that the death penalty should not be authorized in his case.  
3

4 Ortiz's Motion was supported by a Memorandum of Points and Authorities  
5 (Docket # 153) and by the Declaration of John T. Phillipsborn, Learned Counsel for Defendant  
6 Joseph Ortiz (Docket # 156). Defendant Flores joined in the Motion (Docket # 168). On July  
7 20, 2012, the Government filed its opposition to Defendant Ortiz's Motion for Discovery  
8 (Docket# 213).  
9

10 The Government essentially argued discovery is controlled by Rule 16 of the Federal Rules of  
11 Criminal Procedure and there are no special discovery and disclosure principles that apply to a  
12 death-eligible defendant.

13 Defendant Flores files this Memorandum to inform the Court that *in United States vs.*  
14 ***Christopher B. Ablett, Northern District of California (CR 09-0749 RS)***, Chief Magistrate  
15 Judge Larson ordered the early production of the discovery now sought by Defendant Ortiz.  
16 AUSA Wilson Leung is well aware of the decision as he was at the time the lead prosecutor in  
17 the Ablett Case.  
18

19  
20 ARGUMENT  
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22

23 Ablett, like the instant case was a VICAR, (18USC § 1959(a)) prosecution in  
24 which the Defendant was alleged to be a member of an enterprise, the Mongols Motorcycle  
25 Club, who murdered a member of a rival enterprise, the Hells Angels Motorcycle Club, for the  
26 purpose of gaining entrance to or maintaining or increasing his position in the enterprise. When  
27 indicted, Ablett was death – eligible. Early in the case the Ablett defense sought broad discovery  
28 in part to prepare and present its arguments why Ablett should not be authorized as a death case.

1           On January 5, 2010 defense counsel sent the prosecution a detailed letter requesting  
2 discovery. The letter is attached here to as Exhibit A to this Memorandum. Having received no  
3 response to the letter, on April 23, 2010 Ablett filed a Notion of Motion and Motion to Compel  
4 Discovery, a copy which is attached to this Memorandum as Exhibit B.  
5

6           On May 18, 2010 the government filed it's response to Defendants Discovery Motion at  
7 pages 5-8 of its Response to Defendants Pre-Trial Motions. A copy is attached to this  
8 Memorandum as Exhibit C. The government did not address the need for the early production of  
9 broad discovery in a death-eligible case or the specific discovery requests made in Ablett's  
10 Motion. Instead, the government's position was that Rule 16 set the limits of it's obligations and  
11 maintained, as it does in the instant case, " Nothing about the death-eligible nature of the  
12 charges in this case changes the Government's approach to discovery." ( Exhibit C, P.7)  
13

14           On June 5, 2010, Ablett filed his reply to Government's Opposition to Discovery. A  
15 copy is attached as Exhibit D. The reply noted that what limited discovery had been  
16 produced was heavily redacted, including percipient witness identification information.  
17  
18 ( Exhibit D, Declaration of Michael Burt, page3).

19           On September 2, 2010, Chief Magistrate James Larson held a hearing on the discovery  
20 Motion. A transcript of the hearing is attached as Exhibit E.  
21

22           On December 29, 2010 Chief Magistrate Judge Larson entered an Order granting  
23 all requests made in Ablett's Discovery Motion. A copy of the Order is attached to this  
24 Memorandum as Exhibit F. Chief Magistrate Judge Larson found that because Ablett was  
25 presently subject to a possible sentence of death "this warrants especially careful treatment as  
26 capital punishment is qualitatively different than any other form of punishment". Holding that  
27 the pre authorization phase of a capital case is analogous to the penalty phase of a trial,  
28

1  
2 and defense counsel must have access to all relevant discovery in order to provide effective  
3 assistance to the defendant, Chief Magistrate Judge Larson Ordered the Government to  
4 provided all discovery requested by the Defendant. (Exhibit F, page 14-15).

5 The government was ordered to produce the discovery within 20 days of the Order. The  
6 Government did not appeal Chief Magistrate Judge Larson's Order. Thus, Ablett is authority in  
7 this District for this Court to grant the broad discovery requested in Defendant Ortiz' Motion.  
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12 DATED: July 26, 2012

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15 Attorney for the Defendant  
16 Victor Flores  
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15 DATED: July 26, 2012

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